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Liaison Committee with the Federal Court of Appeal and Federal Court  
Meeting held at 30 McGill Street in Montréal, on March 28, 2018, at 5 p.m.

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Present:

For the Federal Court of Appeal:  
The Honourable  
Marc Noël  
Amélie Lavictoire

For the Federal Court:

The Honourable Paul S. Crampton  
The Honourable Denis Gascon  
The Honourable George R. Locke  
The Honourable Martine St-Louis  
The Honourable Elizabeth Walker  
Richard Morneau, Prothonotary  
Sylvia MacKenzie

For the Courts Administration Service:

Daniel Gosselin, Chief Administrator  
Emmanuelle Bélice

Present for the Montréal Bar:

Joanie Lapalme, Chair  
Magali Fournier  
Pierre Lamothe  
Daniel Latulippe  
Claudia Andrea Molina  
Alexander Pless  
Peter Shams  
Alexandra Steele

Also present:

Doris Larrivée, Executive Director  
Jean Michel Desgagnés, who recorded the deliberations.

Absent:

Jean-François Bilodeau  
Felipe Morales

1. OPENING AND ADOPTION OF THE AGENDA

The Chair declared the meeting open at 5 p.m. The agenda was adopted as presented.

2. WELCOME AND INTRODUCTIONS

The Chair welcomed the representatives of the Judiciary, the Bar and the CAS and emphasized that the objective of the Liaison Committee is to create a forum for discussion between the Montréal Bar and the Federal Courts.

All of the participants introduced themselves. The Judiciary highlighted the importance of the Committee and said it was proud to be a part of it.

3. ADOPTION OF THE MINUTES OF THE MEETING ON JANUARY 26, 2017

The minutes were adopted as written.

4. FEDERAL COURTS ACTIVITIES

4.1 Report by the Honourable Marc Noël

In 2017, 438 cases were introduced in the Federal Court of Appeal, which heard 446 cases. At the end of the year, 445 cases were still pending. In Quebec, the number of cases introduced dropped by half, from 100 to 55. For Montréal, cases introduced dropped from 75 to 42. The Chief Justice was not alarmed by the situation, since 2016 was exceptionally busy. The judge stated that statistics must be interpreted with caution. The number of decisions rendered is an important factor, but it is the increased complexity of decisions that justifies the appointment of more judges, since deliberations are longer than they were in the past.

The Chief Justice announced that Justice Johanne Trudel would be leaving on April 1, 2018, and highlighted her significant contribution to the work of the Federal Court of Appeal over the past 10 years. Justice Eleanor R. Dawson became a supernumerary judge, and Justice Judith M. Woods would become one on April 1, 2018. Justice John B. Laskin was appointed to the Federal Court of Appeal on June 21, 2017.

#### 4.2 Report by the Honourable Paul S. Crampton

The Federal Court made a number of appointments in the past year: Justices Shirzad S. Ahmed, Paul Favel, Sébastien Grammond, Roger Lafrenière, John Norris, William F. Pentney, Elizabeth Walker and Prothonotary Kathleen Marie Ring. Justice Shore became a supernumerary judge, and Justice Martineau would become one on September 1.

Long trials (five or more days) are scheduled for winter 2019. Other trials and applications are scheduled within a few months. A presentation with the statistics would be sent to the members of the Montréal Bar.

The Court is making increased use of the Notice to Parties and the Legal Profession (2015) concerning proportionality in complex litigation and also published new guidelines on managing actions presented under the Amendments to the Patented Medicines Regulations. The Court noted that there was some delay in the application of the new rules. According to the Court, emphasis must be placed on participatory justice and out-of-court dispute resolution methods.

The Court is currently working on improving its electronic filing capabilities. It is also striving to make e-filing easier to use than expected. The Court is also working on the option of accessing legal files electronically for members of the Bar and the general public. Of course, confidentiality will have to be considered, as well as the various problems associated with data mining. Electronic courtroom equipment is used in various locations in the country.

The Court sent out two notices to the profession. The first concerned informal requests for interlocutory relief. It is possible to confirm by letter the consent or non-objection of other parties to the application, to establish all facts relevant to the application, to file submissions on the application and to attach a draft order. Obviously, the Court retains its discretionary authority to require a motion record, additional information, etc. The second notice to the profession concerns the hearing of citizenship and immigration applications. Counsel may file a joint letter setting out their non-availability in the 120 days that follow the last day for filing of a reply for the hearing on the merits. The principal criteria for non-availability are a previously scheduled hearing before a Superior Court and illness. In addition, within seven days of issuance of an order granting leave, a party may request an adjournment. The letter must confirm the other party's consent or non-objection, briefly set out all facts and submissions relevant to the request and set out the availability of all parties within six weeks of the scheduled date. If the hearing is rescheduled and no applications are filed by motion, the original deadlines for filing documents will not change.

Final judgments now have one of the following titles: "judgment and reasons" when the reasons are complete, "judgment" when an abridged approval is used and "oral judgments" when the judgment is rendered orally and then transcribed. Orders are now used only for interlocutory judgments. All final judgments are now posted online and translated, except for judgments by consent. The members of the Court can still, at their discretion, post interlocutory judgments that they consider to be of public interest.

The Chief Justice concluded by reiterating that the Court does not receive enough funding for translating decisions, which presents a problem for a bilingual and bijural institution.

#### 4.3 Report by the Chief Administrator

The Federal Courts received \$55.5 million over five years and \$10.7 million recurrently thereafter. These amounts are used primarily to meet the need to increase the capacity of the Judicial and Registry Services of the four Federal Courts. Despite the good news, funding is still required for the transition to digital (new Courts and Registry Management System) and translation needs, which largely remain at a deficit.

There was a request for funding for the Montréal office. The Chief Administrator hopes to relocate by 2022. Various options are being evaluated, including relocating to the former Montréal courthouse or constructing a new building. The option to remain in the current building has not been ruled out, but it is not supported by Public Works and Government Services Canada.

Security-related initiatives are in full deployment, and Judicial Services are very satisfied with the progress to date.

One member raised an issue with sending emails. Large files must be sent separately because, otherwise, the Federal Courts server cannot receive them. This information surprised the Chief Administrator, who said that the capacity of inboxes had been doubled. However, it was suggested that large messages be compressed. One member asked whether it is possible to receive decisions by email. The Court said it is possible, but that follow-up would have to be done since the fax machine was being used to obtain confirmation of receipt.

The Chief Administrator closed by highlighting Chantal Carbonneau's appointment as Deputy Chief Administrator to replace Richard Tardif, who returned to his position at the Department of Justice.

#### 5. FOLLOW-UP ON PREVIOUS MEETINGS

##### 5.1 Digital transition

##### 5.1.1 Funding for digital transition

This topic was discussed in the items above.

##### 5.1.2 Virtual general appeal of cases

The first phase of the electronic scheduling system was launched. The second phase was scheduled to be launched in fall 2018, and the third phase will be launched in 2020.

##### 5.2 Access to Justice

##### 5.2.1 Extension of time limit for obtaining legal aid mandates

Counsel representing clients receiving legal aid and who must request an extension of time for obtaining the legal aid mandate are put in a precarious situation. Therefore, it was asked whether it would be possible to reduce the burden on counsel who must submit such a request. The Court said that counsel can state in a letter that they are waiting for the legal aid to be approved. Subsequently, counsel can contact the Court a second time before the end of the time limit to provide an update. If they are still awaiting a response from legal aid, the file can be suspended while it is pending, since the Court is very sympathetic to this type of situation. However, counsel should not wait until the time limit expires and then justify it afterward.

##### 5.2.2 Use of the legal aid certificate as payment for the stamp

It was asked whether it is possible to open a Court file without the lawyer paying for the stamp out of pocket while awaiting a response from legal aid. The Court said that as long as it knows that it will be paid one way or

another, it can be flexible about the terms of payment. For the time being, Justice Canada said that this request would be disputed, in accordance with the Court's jurisprudential stance. A written letter would have to be sent to the Court rules committee regarding both item 5.2.1 and item 5.2.2. It is also possible to make a request under Rule 19 of the Federal Courts Rules, but this requires affidavit proof.

#### 5.2.3 Application of the electronic service rule by the Registries

The Federal Court of Appeal Registry recently refused an electronic proof of service filed with the notice of appeal because there had been no proof of receipt. However, proof of delivery should be sufficient. According to the Chief Justice, this is not a typical response. Ms. Steele would send him a memo about this.

#### 5.2.4 Availability of templates on the Federal Courts website

To assist parties representing themselves, the Federal Courts should provide templates in Word format to ensure that they use documents that comply with the rules. The Court said that this is a priority in its strategic plan. The website will be redone in an effort to make the information more accessible. Follow-up would be done with Ms. MacKenzie to propose templates. Templates would have to be provided with notes, excerpts of decisions and links to instructions on how to prepare a quality document. There was some reluctance, but the risks are low and the benefit would be enormous. Counsel from the Supreme Court had been hired by the Courts and would be put in touch with the Committee.

### 6. NOTICE TO PARTIES AND MEMBERS OF THE LEGAL PROFESSION

#### 6.1 Posting of decisions on the Federal Court of Appeal website

Decisions are posted as quickly as possible after they are sent to the counsel of record, typically within two days of being sent.

#### 6.2 Gowning before the Federal Court of Appeal

Gowning is mandatory, but professional attire can exceptionally be worn for motions. There is some flexibility for counsel who are pregnant, but they must wear dark-coloured clothing.

### 7. TOPIC(S) RAISED BY COUNSEL

#### 7.1 Amendments to the Federal Courts Rules

##### 7.1.1 Creation of a sub-committee

The members of the Montréal Bar announced the creation of a sub-committee to ensure that suggestions and comments are conveyed in a timely manner. The objective is to be more flexible and proactive with regard to proposed amendments.

#### 7.2 Translation times

This topic was discussed in a previous item.

#### 7.3 Relocation and security for the offices at 30 McGill Street

This topic was discussed in a previous item.

### 8. 2018 SPRING CONFERENCE

#### 8.1 Date

Follow-up would be done with Ms. Lavictoire and Ms. MacKenzie to schedule the conference date.

## 8.2 Topics

The Bar members made two suggestions to the Courts. The first was to use the same format as last year, and the second was to make a presentation on class actions. Last year's format was retained with the possible incorporation of questions about class actions. Therefore, it would be a town hall meeting, where the registered members could pose questions of interest to the Federal Courts and thus establish a dialogue with its representatives. Of course, questions could be prepared in advance to help the activity run smoothly. In this regard, the Montréal Bar could ask the members who register to send their questions with their registration. Like last year, the conference will be held at Club Saint-James.

### 9. VARIA

Prothonotary Richard Morneau will retire on May 15. Chief Justice Crampton, Chief Justice Noël and all of the Committee members highlighted his contribution to the Court.

### 10. ADJOURNMENT

The Chair thanked the members and adjourned the meeting at 7 p.m.